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14 *BETH ARRIAGA*

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

17 BETH ARRIAGA, an individual;  
18 Plaintiff,

19 vs.

20 KIMBERLY-CLARK CORPORATION;  
21 and DOES 1 through 25, inclusive;  
22 Defendants.

Case No.: 5:22-cv-00740-JGB-SP

**PLAINTIFF’S FIRST AMENDED  
COMPLAINT FOR DAMAGES FOR:**

1. Strict Products Liability
2. Products Liability – Negligence
3. General Negligence

**[JURY TRIAL DEMANDED]**

*[On Removal from the Superior Court of  
the State of California for the County of  
Riverside, Case No.: CVSW2201085]*

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26  
27 COMES NOW Plaintiff, BETH ARRIAGA, demanding a jury trial, and hereby  
28 complains and alleges against Defendants as follows:

1           1.     Plaintiff Beth Arriaga (“Plaintiff”) individually brings this action against  
2 Defendant Kimberly-Clark Corporation (“Defendant” or “Kimberly-Clark”).

3           2.     This is a lawsuit seeking recovery for the personal and economic harms  
4 caused by the manufacture, sale, and subsequent recall of a contaminated, dangerous,  
5 and now-worthless flushable wipes by Defendant Kimberly-Clark.

6           3.     During the Covid-19 pandemic, Kimberly-Clark was capitalizing on the  
7 public’s heightened concern over the spread of infectious disease and was neglecting  
8 the safety and sanitation responsibilities it owed to its customers and the public at large.

9           4.     On or about February of 2020, Kimberly-Clark released Cottonelle  
10 Flushable Wipes (“Cottonelle Wipes” or “Wipes”) contaminated with a dangerous  
11 bacterial strain called *Pluralibacter gergoviae*.

12          5.     Lacking appropriate safeguards to detect and/or remediate bacterial  
13 contamination in its products (or otherwise failing to execute them with reasonable care  
14 or competence), Kimberly-Clark proceeded to distribute the contaminated Cottonelle  
15 Wipes through retail channels and, ultimately, to Plaintiff, through major retailers such  
16 as Amazon and Costco.

17          6.     Kimberly-Clark received ample warnings through reports of rashes,  
18 infections and other serious health complications. For a leading multinational  
19 manufacturer of hygiene and sanitary products, they presented cause for prompt and  
20 careful investigation.

21          7.     Kimberly-Clark’s investigation was neither prompt nor careful. Only after  
22 Kimberly-Clark received a number of customer complaints regarding skin irritation,  
23 infection and other complications became overwhelming did Kimberly-Clark conduct  
24 investigation and product testing required to discover the bacteria contamination.

25          8.     On or about October 9, 2020, Kimberly-Clark announced a nationwide  
26 recall for affected lots of the Cottonelle Wipes.

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1 **PARTIES**

2 9. Plaintiff Beth Arriaga is a natural person who is, and at all times relevant  
3 hereto was, a resident of the United States of America and a domiciliary of the state of  
4 California.

5 10. Plaintiff is informed and believes, and thereon alleges that, at all relevant  
6 times hereto, Defendant Kimberly-Clark, is a private corporation, authorized to  
7 conduct, and does conduct, business in the State of California.

8 11. Kimberly-Clark manufactures various personal care and consumer tissue  
9 products and distributes them worldwide under a portfolio of well-known brands,  
10 including Cottonelle.

11 12. Plaintiff is informed and believes, and thereon alleges, that the fictitiously  
12 named defendants sued herein as DOES 1 through 25, and each of them, at all relevant  
13 times hereto, was the agent, employee, and/or representative of Kimberly-Clark and/or  
14 committed each of the acts or omissions alleged herein.

15 **JURISDICTION AND VENUE**

16 13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because  
17 the occurrences, acts, and omissions complained of herein, including Plaintiff's injuries,  
18 took place, either in whole or in part, in the County of Riverside, State of California.

19 14. The Court has personal jurisdiction over Defendant because, upon  
20 information and belief, Defendant, conducts business in California. Defendant has  
21 sufficient minimum contacts in the State of California or otherwise intentionally availed  
22 itself to the market in the County of Riverside, State of California.

23 **FACTUAL ALLEGATIONS**

24 15. The following allegations set forth in this Plaintiff's First Amended  
25 Complaint ("FAC") are based on information and belief.

26 16. On or about February of 2020, Kimberly-Clark began distributing retail  
27 packages of its Cottonelle Wipes that it knew or should have known were contaminated  
28 with a dangerous bacterium called *Pluralibacter gergoviae*.

17. Formerly known as “*Enterobacter Gergovia*,”<sup>1</sup> *Pluralibacter gergoviae* is a rare pathogen linked to several infections including, but not limited to, lower respiratory tract infections, skin and soft tissue infections and urinary tract infections.”<sup>2</sup>

18. According to the FDA, *Pluralibacter gergoviae* poses a particular risk of infection to “[i]ndividuals with weakened immune systems, who suffer from a serious preexisting condition, who have been treated surgically or belong to another sensitive group of persons.”<sup>3</sup>

19. Symptoms of *Pluralibacter gergoviae* infections are indistinguishable in clinical presentation from those of more common bacterial infections. Yet *Pluralibacter gergoviae* is stubbornly resistant to antibiotics typically used for those common bacterial infections, making their diagnosis and treatment difficult.

20. Kimberly-Clark was notified by many consumers who used Cottonelle Wipes that reported adverse symptoms consistent with exposure to *Pluralibacter gergoviae* prior to their Recall. Thousands of women have reported urinary-tract infections after using the Cottonelle Wipes which required medical visits. For instance, Cottonelle’s social media accounts have been flooded with accounts of injuries relating to the products.

21. Plaintiff purchased Cottonelle Wipes at Costco and online through Amazon starting around February of 2020. She continued to purchase Cottonelle Wipes for several months moving forward and began using them for personal use.

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<sup>1</sup> Brady, C., Cleenwerck, I., Venter, S., Coutinho, T., De Vos, P. *Taxonomic evaluation of the genus Enterobacter based on multilocus sequence analysis (MLSA)*. Systematic and Applied Microbiology, 36 (2013), at 309 – 319.

<sup>2</sup> Roseann B. Termini & Leah Tressler, *American Beauty: An Analytical View of the Past and Current Effectiveness of Cosmetic Safety Regulations and Future Direction*, 63 Food & Drug L.J. 257, 274 n.124 (2008).

<sup>3</sup> See *Warning Letter to Paul Xenis, Gilchrest & Saomes*, Food and Drug Administration, MARCS-CMS 485833. March 16, 2016), ¶ 2, available at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warnings-letters/gilchrist-soames-485833-03162016>.



1           31. Kimberly-Clark placed the Wipes in the stream of commerce by  
2 distributing them to various retailers, including, where the Cottonelle Wipes were  
3 ultimately purchased by, or for use by, Plaintiff.

4           32. The Cottonelle Wipes purchased by Plaintiff were in a defective condition  
5 that rendered them unreasonably dangerous at the time Kimberly-Clark designed,  
6 manufactured, maintained, sold, distributed, and/or supplied them –namely, because  
7 they were contaminated with the harmful bacterium *Pluralibacter gergoviae* – because  
8 the wipes were defectively manufactured, in that the finished wipes deviated in terms  
9 of its construction or quality from the specifications or planned output in a manner that  
10 caused, permitted, or failed to detect the contamination of the Wipes by a dangerous  
11 bacterial contamination, or that otherwise rendered them unreasonably dangerous.

12           33. Kimberly-Clark’s defective design and/or manufacture of the Wipes was  
13 the direct, producing, substantial, and proximate cause of the losses sustained by  
14 Plaintiff, including, but not limited to, excruciating pain and suffering, mental anguish,  
15 embarrassment, loss of enjoyment of life, and emotional distress, as well as the  
16 manifestation of associated physical symptoms, all to Plaintiff’s damage in an amount  
17 which is uncertain at this time, but within the jurisdiction of this Court, and will be  
18 determined according to proof at trial.

19           34. Kimberly-Clark had actual, subjective awareness of the risks of harm and  
20 the forgoing conduct posed to the rights, safety, and welfare of Plaintiff, but consciously  
21 disregarded such risks, and otherwise acted with gross neglect, malice and/or  
22 recklessness, such that Plaintiff is entitled to an award of punitive and exemplary  
23 damages in an amount sufficient to punish and deter like conduct.

## 24                                   **SECOND CAUSE OF ACTION**

### 25                                   **Products Liability - Negligence**

26           35. Plaintiff hereby repeats, re-alleges, and incorporates herein by reference  
27 each and every allegation in the preceding and subsequent paragraphs of this FAC.

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1           36. Defendant Kimberly-Clark, directly or through its agents, employees,  
2 and/or representatives designed, manufactured, maintained, sold, distributed and/or  
3 supplied Cottonelle Wipes, in the County of Riverside, State of California, which is the  
4 area in which the Wipes were purchased for Plaintiff.

5           37. At the time the Cottonelle Wipes left Defendant Kimberly-Clark's control,  
6 there was a manufacturing and/or design defect. At that time, the Cottonelle Wipes were  
7 in a defective and unreasonably dangerous condition.

8           38. As the company engaged in the business of designing, manufacturing,  
9 distributing, and/or selling Cottonelle Wipes, Defendant Kimberly-Clark knew, or  
10 should have known, about the potential dangers that their wipes could have had with  
11 the contamination of the harmful bacterium *Pluralibacter gergovia*.

12           39. As a company engaged in the business of designing, manufacturing,  
13 distributing, and/or selling Cottonelle Wipes, Defendant Kimberly-Clark had a duty to  
14 discover and correct any defects in its products.

15           40. Defendant Kimberly-Clark was negligent and failed to exercise reasonable  
16 care in the manufacturing, designing, inspecting, distributing, and/or selling of the  
17 Wipes.

18           41. Defendant Kimberly-Clark's negligence in manufacturing, designing,  
19 inspecting, distributing, and/or selling of the Cottonelle Wipes were a substantial factor  
20 in, and the direct and proximate cause of, Plaintiff's injuries.

21           42. As a direct and proximate result of the negligent acts and omissions of  
22 Defendant Kimberly-Clark, as alleged herein, Plaintiff has sustained serious injuries,  
23 including, but not limited to, excruciating pain and suffering, mental anguish,  
24 embarrassment, loss of enjoyment of life, and emotional distress, as well as the  
25 manifestation of associated physical symptoms, all to Plaintiff's damage in an amount  
26 which is uncertain at this time, but within the jurisdiction of this Court, and will be  
27 determined according to proof at trial.

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48. As a further direct and proximate result of the actions and omissions of Defendant, as alleged herein, Plaintiff was required to and did visit healthcare providers for, *inter alia*, examination and treatment of her injuries, thereby incurring, and continuing to incur, medical and incidental expenses, all in an amount which is uncertain at this time, but within the jurisdiction of this Court, and will be determined according to proof at trial.

49. In committing the foregoing breaches, Kimberly-Clark acted grossly negligent and/or recklessly, such that an award of punitive damages should issue against Kimberly-Clark in an amount sufficient to punish and deter like conduct.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant, as follows:

1. For general and compensatory damages in an amount according to proof at trial;
2. For special damages in an amount according to proof at trial;
3. For punitive damages to punish, deter, and make an example of Defendant;
4. For such other and further relief available under all applicable state and federal laws;
5. For reasonable attorneys' fees, expenses, and costs of suit herein incurred;
6. For such other and further relief as this Court deems just and proper.

Date: May 12, 2022

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